

# INVESTIGATIVE REPORT

Re: State of Wisconsin v. John Maloney

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## **I Introduction**

During the past year, at the request of Deputy Attorney General Daniel Bach and Assistant Attorney General Steven Tinker. I conducted an independent investigation and review of the criminal conviction that resulted from the prosecution of John Maloney for the death of his estranged spouse. Sandra. This review is not intended to be, nor is it all extensive. For example, issues that are being litigated, have been litigated or could be litigated in post-conviction proceedings are not, nor were they intended to be, part of this investigation. Those issues are best viewed in the context of the trial and are appropriate for determination by the trial judge or appellate courts. Similarly, I have not acted as some type of 13<sup>th</sup> juror. The report is not intended to be a recitation of the strength of the case against John Maloney nor does it involve a weighing of the evidence. Rather, I was directed by the Deputy Attorney General to "tell us how you see it" and to analyze if there was evidence not presented to the jury that in my viewpoint created a "manifest injustice" such that a new trial is warranted for John Maloney.

At the commencement of this review, I knew absolutely nothing about the case. I started my investigation by reviewing websites maintained by Truth in Justice ([truthinjustice.org](http://truthinjustice.org)) and Matthew Maloney ([JohnMaloney.org](http://JohnMaloney.org)) which are dedicated to obtaining either a new trial or exoneration of the defendant. In addition, I have repeatedly reviewed materials that were provided to the Attorney General by Truth in Justice.<sup>1</sup> These items included some historical medical records of the deceased, and a CD with numerous photos, reports, post-trial investigation, and excerpts from the trial transcript. A detailed listing of sources contacted, interviewed or reviewed is attached at the end of this report. Due to nature of the case and my investigation, I will not dichotomize this report into separate findings of facts and conclusions. I will first present an overview of the case and then break down by issue or witness the pertinent facts and the conclusions that can be drawn from those facts.

## **II. Overview**

On Wednesday morning, February 11, 1998. Lola Cator discovered the partially charred body of her daughter, Sandra Maloney. Sandra's body was found in a prone position on a burnt couch in the living room on the first floor of her residence located on Huth St. in Green Bay, Wisconsin. Although she was laying on her front, Sandra's neck and head were in a pulled back position. There was fire damage on the first floor and extensive smoke damage, but the fire had self-extinguished without destroying the house or completely destroying Sandra's body. Lola obtained access to the house through the front door. She had to cut a shoelace that had been secured between the storm door and the inside main door. According to Lola, the tying of a shoelace in this manner and at this location had been used in the past by the decedent.

Prior to the time of her death, Sandra Maloney had an extensive history of abusing alcohol

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<sup>1</sup>Truth in Justice is an organization whose stated purpose is to educate the public as to vulnerabilities in the U.S. criminal justice system. Sheila Berry is the director. She formerly worked as a victim-witness coordinator for Winnebago County. According to local media, she was fired by Joe Paulus in 1990 during Paulus' controversial prosecution and subsequent exoneration of Mark Peterson. A few months later, Paulus' wife, who was Sheila's cousin, divorced Paulus. Ms. Berry has authored a book on the Maloney case entitled *"Full Circle"*. The book parallels the position taken by Truth in Justice on this case.

and prescription drugs in conjunction with psychological problems. Specifically, in October of 1996, she was evaluated at Bellin Psychiatric Center and was diagnosed with benzodiazepine dependence, alcohol abuse, anxiety disorder and dysthymia (a long-term chronic but less severe type of depression). The benzodiazepine dependence related primarily to her use of Klonopin (clonazepam) which was being prescribed to treat her anxiety disorder. This diagnosis was confirmed in April of 1997 after she was hospitalized subsequent to an involvement in a motor vehicle accident while she was intoxicated (BAC of .29). Sandra was a cigarette smoker and had on one prior occasion (New Year's Eve) been reportedly found fully clothed and passed out on her back with an ashtray on her abdomen with a cigarette in hand.

Sandra and John Maloney were married in July of 1978 and bore three children; Matthew, Sean and Aaron. According to Sandra's psychiatric records this was a volatile marriage involving physical and emotional abuse. In May of 1997, John moved out of the house and in June of 1997 filed for divorce. As of February 10, 1998 the divorce had not been finalized. A final pre-trial hearing in the divorce was set for the morning of February 11, 1998. There were outstanding issues of child custody and potential financial obligations owed by John to Sandra or her mother. John Maloney was a detective with the Green Bay Police Department and had within the prior year or so become an arson investigator and correspondingly assigned to the Brown County Arson Task Force.

The initial assessment of the fire by the Brown County Arson Task Force was that the cause was accidental in nature.' Because of the unavailability of the Brown County Medical Examiner, Sandra's body was sent to Milwaukee for an autopsy, which was preformed by Dr. John Tegatz, Deputy Chief Medial Examiner of Milwaukee County on February 12, 1998. Subsequent to the autopsy, the investigation of this case was turned over to the State of Wisconsin Division of Criminal Investigation (DC I). DC I's Fire Investigator, Greg Eggum concluded that the cause of the fire was arson.

Law enforcement developed a number of suspects, the primary being John Maloney. In June of 1998, John's live-in girlfriend at the time of the fire, Tracy Hellenbrand, through her attorney, approached law enforcement requesting a meeting to discuss possible criminal and administrative misconduct by Hellenbrand in her role as a criminal investigator with the IRS and to discuss issues related to the death of Sandra Maloney. A meeting was arranged for and held June 6<sup>th</sup>, 1998. Prior to meeting with law enforcement, Hellenbrand received "use" immunity from federal prosecutor Steven Biscupic. In other words, law enforcement could not use what Hellenbrand would tell them in a subsequent criminal prosecution but it would not prevent authorities from prosecuting Hellenbrand based on other evidence developed independently. As a result of the June 6<sup>th</sup> interview Hellenbrand agreed to use a recording device and attempt to elicit an admission from John Maloney concerning his potential involvement in the death of Sandra Maloney. Two attempts by Hellenbrand were unsuccessful, as John repeatedly denied his involvement in the death of Sandra Maloney. On the weekend of July 25<sup>th</sup> - July 27<sup>th</sup>, 1998 she shared a hotel room at the Lady Luck Hotel in Las

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- The defendant did not participate in this evaluation. One of the other investigators for the task force later reported that he was upset that he had been fooled into concluding that the fire was accidental. Also, another member of the squad, Capt. Bartlett reported that although indicators showed the fire resulted from possible misuse of smoking materials that the case should be considered under investigation pending the autopsy report and further investigation by the state.

Vegas with John. Law enforcement videoed the encounter and John Maloney was subsequently arrested in Las Vegas for the murder of Sandra Maloney. During this encounter, John did not admit to killing Sandra but rather admitted to being in the house on the night in question. Also, during the video the defendant engaged in what is best described as violent conduct directed at Hellenbrand.

The theory of defense at trial was that Sandra Maloney's death was a homicide but that the perpetrator was someone other than John Maloney: specifically, Tracy Hellenbrand. However, in February of 1999, John Maloney was convicted by a jury in Brown County Circuit Court of first degree intentional homicide, arson and disfiguring a corpse. The direct appeal was unsuccessful and an appeal from a denial of a post-conviction motion pursuant to Section 974.06 is presently pending before the Wisconsin Supreme Court. Subsequent to the conviction, various parties, including the immediate family of John Maloney and Sheila Berry from Truth in Justice obtained police reports and other materials concerning the underlying prosecution in this case. Some of these items were then turned over to other individuals for evaluation and analysis. These evaluations and opinions in turn were provided to me for review. One of those subsequent evaluations was Brent Turvey's *Threshold Assessment*. Turvey has an M.S. in Forensic Science and works in the area of criminal profiling and crime scene analysis. I used his evaluation as a touchstone.

The key question in the case is whether Sandra Maloney's death was in fact intentional or was it accidental in the nature of an aborted suicide attempt. If it was intentional, then that is the case that was litigated before the Brown County jury and is at issue in the appellate courts. If it was accidental, the evidence in support of this theory was never presented to the trier of fact.<sup>1</sup> The "accident theory" turns primarily on evidence found in the basement of the residence of Sandra Maloney by law enforcement.<sup>2</sup> That evidence consists primarily of fingerprint and blood evidence in the downstairs bathroom, and an electrical cord hanging from a conduit pipe in the downstairs recreation room. In further support of this theory, proponents point to crumpled up "suicide" notes found in the kitchen waste basket. The notes seem to be repeated attempts by Sandra to draft a note addressed to John telling him that she hates him but had loved him and that she loves the children. Some of the notes also contain an expression of concession of custody of the children to John.

In an attempt to evaluate this evidence, I have cross correlated information from analysts of the Wisconsin Crime Lab, personal interviews, police reports, and the various material accumulated by Truth in Justice and the Maloney family. Findings and conclusions follow.

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<sup>1</sup>In reviewing this case, this writer has been perplexed by the fact that Attorney Wasserman never submitted any evidence of the "accident theory." in his Motion for Post-Conviction Relief. I disagree with his conclusion that because John, after the trial, publically stated that Sandra was intentionally killed by Tracey; this somehow was an admission prohibiting inquiry into whether the death was "accidental."

<sup>4</sup>There has actually been a variety of theories pursued in the attempt to reopen this case. I have attempted to synthesize those theories into single logical theory for purposes of this report.

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## **Anatomical Findings of the Deceased and Cause of Death**

### **A. Background**

#### **1. Autopsy**

Due to the unavailability of Dr. Schmunk, Brown County Medical Examiner, the autopsy of Sandra Maloney was conducted by Dr. John Teggatz from Milwaukee County on February 12, 1998. During the course of the autopsy, he discovered evidence of trauma. Externally, there was a laceration to the right posterior parietal aspect of the scalp. This laceration measured 5.5 cm in length. There was subgaleal hemorrhage, but no skull fracture.

On the anterior (front) portion of the neck, the skin had increased firm texture associated with thermal change and no observable injuries. Internal examination revealed a hemorrhage directly overlying the hyoid bone as well as hemorrhages bilateral in the thyrohyoid region. No fracture to the thyroid cartilage or hyoid bone was discovered. Examination of the posterior (backside) of the neck revealed an area of subcutaneous hemorrhage in the mid- lower neck to upper back portion. Due to thermal change overlying the skin on the backside of the neck no external injury could be seen. Subcutaneous hemorrhage was observed in the mid to lower back region but again due to heavy charring no surface injury could be defined. Left buttocks also revealed a circular 3.5 cm contusion but again no external markings due to thermal injury. A petechial hemorrhage was visible on the palpebral conjunctivae of the left eye. Finally, a minimal amount of black soot material was within the larynx and extended downward into the trachea.

Toxicological analysis revealed a blood carbon monoxide level of 8% and acute alcohol intoxication revealed by a blood alcohol content of .25 and a vitreous alcohol content of .40. Dr. Teggatz's autopsy report listed as a cause of death: probable manual strangulation.

#### **2. Testimony at Trial**

##### **a. Direct Examination**

Dr. Teggatz testified at trial as to the cause of death and the results of his autopsy.<sup>5</sup> Basically, he testified in accord with his autopsy report.<sup>6</sup> Dr. Teggatz

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<sup>5</sup>The Medical Examiner for Brown County, Dr. Schmunk, did not testify at trial nor did he participate in the autopsy of the deceased. While his viewpoints and analysis in this case have generated criticism from individuals subsequently reviewing this case, I have not addressed his findings due to those two reasons.

<sup>6</sup>In reviewing Dr. Teggatz's testimony at trial, I used the transcript provided by Truth in Justice on the CD sent to the Attorney General. I assumed that the material was an accurate reproduction and did not check it against the original. I followed this practice throughout this investigation. In other words, I always assumed that the material provided by Truth in Justice was an accurate reproduction of the original.

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opined to a reasonable degree of medical certainty that Sandra Maloney's death was not caused by fire. External injuries to Sandra consisted of significant charring, the laceration to the back part of the top of the head, and a scrape mark triangular in shape on the right wrist. The skull was not fractured. Internal examination revealed the large area of hemorrhage in the lower back, hemorrhage in the upper portion of the back of the neck, and hemorrhage way down in the deep muscle layers of the neck in the adams apple area including both sides of the thyroid cartilage. Dr. Teggatz characterized this anterior internal injury as a result of "some pretty big time trauma" that were "strongly suggestive of some type of manual manipulation, a manual strangulation type of situation..." He further testified that manual **meant use of one's hands as opposed to use of a ligature or rope/string**. The cause of death was identified as the denial of oxygen to the brain and that her death was asphyxial in nature, and "it relate[d] to manual strangulation with some suffocation."

The carbon monoxide level was only 8% which was an acceptable level for a smoker and substantially below what is typically found in fire deaths that are caused by the inhalation of smoke. In fire deaths caused by smoke the carbon monoxide levels are typically 20 to 40% and sometimes as high as 80%. As to the soot found in the airway, Dr. Teggatz opined that the amount was "very minimal" and there were two possible explanations for its presence. The first was that she was near death and may have had a couple of breaths of air at the time the fire was going or due to the fact of the position that she was found (the neck being very hyper-extended) may have resulted in the soot working its way down the trachea.

Other significant findings included that the head wound occurred close in time to death because microscopic examination revealed the existence of no white blood cells and that there was a spared area of external damage to Ms. Maloney which included the front chest area to the upper abdomen. Finally, the hyoid bone was not fractured.

#### **b. Cross Examination and Redirect**

Consistent with the theory of defense, defense attorney Gerald Boyle elicited from Dr. Teggatz that he could not define the gender of the attacker or the size and strength of the attacker. In effect, he could not opine whether the individual was a 200 pound man or a 15 year old girl.

In large part, the remaining balance of cross examination and redirect focused on the laceration on top of the head. Dr. Teggatz testified that the laceration was in general terms more consistent with somebody hitting the deceased rather than due to a fall, but that was not definite. The fire had obscured patterns in the laceration that are used to make a determination as to the kind of blunt object that caused the injury. It was possible to have this kind of injury if someone took a weapon and hit somebody in the head with the side bottom of the weapon. During redirect, testimony was elicited that any number of objects could have caused the

laceration on top of the head and that Dr. Teggatz had not received any instruments to examine to try to make such a determination.

Finally, Dr. Teggatz opined that the blow to the head took place before (could have been seconds or minutes but not more than a couple of hours) the strangulation. The injury to the lower part of the back was caused by substantial force for which one explanation could be that it was caused by a knee and another explanation could be that the deceased could have been struck with some heavy object in that area.

### **3. Outside Evaluations**

#### **a. Dr. Carlos Jaramillo**

Dr. Jaramillo was hired by Attorney Boyle to review the autopsy performed by Dr. Teggatz. Dr. Jaramillo is licensed to practice medicine in Wisconsin with a specialty in pathology. After reviewing the autopsy findings and photographs, Jaramillo concluded that the finding of "probable manual strangulation" was consistent with the anatomical findings. Additionally, there was a time interval (undefined) between strangulation and death due to the presence of soot. The injury to the top of the head occurred before death.

#### **b. I) Dr. James Dibdin**

Truth in Justice consulted with Dr. James Dibdin in reference to this case. Dr. Dibdin is a former medical examiner and presently works as a private contract forensic pathologist. It is my understanding that he was provided with a packet of the same materials that was provided to this investigator. Included among those materials were 15 digital images (photos) of the deceased taken in the autopsy room. About one half of these images were taken at long range and the majority were external views of the body. There were three photos of the internal injuries to the low back. It is unclear to me as to what the original source of these photos was, although they were apparently obtained from Attorney Boyle's file. In a written report Dr. Dibdin stated that the conclusion reached by Dr. Teggatz that Sandra Maloney's death was caused by strangulation could not be sustained. The hemorrhage in the neck and the petechiae are not what they appear but rather are indicative of livor mortis. In other words, due to blood vessels becoming porous after death, blood escapes into the tissues and gravity causes the blood to pool in areas of the body closest to the ground. Second, the low carbon monoxide level can be explained if the deceased was in an irreversible coma for several hours which would allow the body to eliminate the carbon monoxide. This coma would have been caused by the consumption of alcohol as reflected by the toxicological findings. The laceration on top of the head could have been sustained by Sandra knocking her head on a hard object. Dr. Dibdin concluded that Sandra died from an overdose of alcohol or in some combination with the inhalation of carbon monoxide from an accidental fire initiated by her own carelessness with lighted cigarettes.

**c. Dr. Werner Spitz and Dr. John Adams**

Other individuals were consulted by Truth in Justice or the Maloney family concerning this case. One of those interviewed was Dr. Werner Spitz, author of a major textbook on forensic pathology.<sup>1</sup> The focus of the Spitz interview revolved around whether proper procedure was followed by law enforcement and an alternative theory for the cause of death of Sandra Maloney. It is unclear as to what materials from this case, if any, Dr. Spitz reviewed in preparation for this interview. Dr. Spitz made clear that if the death was "accidental" the hemorrhages in the muscles of the neck and in the conjunctiva of the eye needed to be addressed and explained. After discussing a scenario in which Sandra Maloney attempts to hang herself with the electrical cord in the basement, the knot slips and Sandra falls and injures her head and back and goes upstairs to smoke a cigarette on the couch, passes out and drops the cigarette igniting the couch: Dr. Spitz states he doesn't know that if [it] encompasses the entire scenario but it's different than what led to the conviction. He recognized his scenario and the state's scenario may be incomplete. As a final note, he found the 8% carbon monoxide level to be significant in that it was extremely low and was maybe due to cigarette smoking. He concluded that Sandra Maloney would have had to die from "anything other than the fire" and that the "fire is a total red herring."

On August 5, 2000, Sheila Berry and Dr. John Adams, who is a forensic pathologist from Baltimore, Maryland, conferred regarding his review of materials excerpted from this case.<sup>2</sup> Included in the materials reviewed by Dr. Adams were the 13 or 15 digital images provided to Dr. Dibdin and photos taken of the electrical cord hanging from the conduit pipe in the basement of the residence. Dr. Adams indicated that he believed that the neck injuries may have been "over evaluated." He cited to the absence of photographs depicting the neck injuries and with regard to the photo showing the low back injury. Dr. Adams stated that it was "not impressive." He further stated that with respect to the toxicology testing that most drug screens used in medical examiners' offices do not test for benzodiazepines. He noted that the presence of an inactive metabolite in the urine screen was a possible indicator that there were benzodiazepines in her system and her lack of seizure in the time period leading up to her death was further evidence that she was continuing to take clonazepam (Klonopin), a benzodiazepine. Dr. Adams stated that there was nothing conclusive of homicide and that absent a deliberately set fire, Sandra's death was accidental in nature.

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The CD provided to this investigator had a transcript of an apparent interview with Dr. Spitz by Doug Berry and Fred Krasco. I do not know if the transcript represents the entire interview with Dr. Spitz nor did I confirm its content by speaking with Dr. Spitz. I assume for purposes of this report that the purported transcript accurately reflects the opinions of Dr. Spitz.

<sup>1</sup>Once again I did not speak directly with Dr. Adams concerning his evaluation. I assumed that the August 5<sup>th</sup> memorandum prepared by Sheila Berry accurately reflected the opinions of Dr. Adams.



#### d. Brent Turvey's *Threshold Assessment*

As previously indicated, Brent Turvey is a forensic scientist and not a medical examiner. However, since his evaluation was used by me as a starting point for my investigation. I will periodically use his opinions and evaluations in approaching an issue. Turvey's report was completed April 19<sup>th</sup> of 2000. Although the exact material reviewed by Turvey in preparation of his report is somewhat detailed, I cannot discern exactly what autopsy photos, crime scene photos and law enforcement investigative reports he reviewed in preparation of his report. That issue aside, a portion of the *Threshold Assessment* addresses the autopsy findings prepared by Dr. Teggatz. Turvey does not challenge the anatomical medical findings but does express concern for the crime reconstruction theories put forward. This concern is based primarily on the fact that Dr. Teggatz was not informed of Sandra Maloney's social, medical and mental health history before Dr. Teggatz completed his autopsy report. Second, Turvey opines that there was a failure to attempt to exclude other possible circumstances which may have resulted in similar injuries.

#### 4. Investigators Approach

In addition to the material outlined above, I had in my possession a law enforcement investigative report generated by Lieutenant Molitor of the Green Bay Police Department. He indicated that on February 12, 1998, he had a phone conversation with Dr. Teggatz concerning the autopsy of Sandra. Dr. Teggatz relayed to Lt. Molitor that he had concerns about Sandra's death being fire related because of the low level of carbon monoxide in her blood and the lack of soot in her airway. He also relayed to U. Molitor the pre-mortem laceration on top of the head and the deep tissue bruising along the sides of the throat. Dr. Teggatz informed Molitor that it was a "confusing case" and requested pictures and video tapes of the crime scene. One of the first things I attempted to do was to find an investigative report reflecting the fact that law enforcement complied with Dr. Teggatz's request. No such report exists.

The following day G.B.P.D. turned jurisdiction of the case over to the Wisconsin Dept. Of Criminal Investigation. Agents went to Milwaukee to view the body and return it to Green Bay without providing any of the requested information to Dr. Teggatz. Eventually, over the time period leading up to trial Dr. Teggatz was provided with some but not all of the collateral evidence found at the house. Information provided included living room photos, the ligature in the basement, the bloody tissues found in the waste basket, and the bloody shirt found in the basement. Accordingly, I wondered how extensive the failure to provide (whether accidental or intentional) background information was to the various experts. This concern extended not only to law enforcement providing information to Dr. Teggatz but also as to what information had been provided to Drs. Dibdin and Adams. Brent Turvey and others. As a threshold matter, **it appeared to me that none of the individuals issuing post trial critiques had consulted with Dr. Teggatz.** Therefore, I decided to collect all of the critiques of Dr. Teggatz's autopsy findings and trial testimony

and provide them to him in seeking a response.

I sent him a packet of information containing the following:

- 1) The pertinent portion of Lt. Molitor's report described above;
- 2) Photos of the electrical cord hanging from the conduit pipe in the basement;
- 3) Dr. Jaramillo's evaluation;
- 4) A portion of Fred Kasco's post-trial interview with Dr. Shmunk;
- 5) Dr. Dibdin's evaluation;
- 6) The transcript of the interview with Dr. Spitz;
- 7) The memorandum of Sheila Berry's interview with Dr. Adams;
- 8) Emails from Gerald Hearst and Ytuarte to Sheila Berry;
- 9) Brent Turvey's *Threshold Assessment*;
- 10) Four excerpts from the johnmaloney.org website; and,
- 11) Two emails from Sheila Berry to this investigator concerning toxicological issues and the chain of custody of Sandra Maloney's corpse.

I then proceeded to interview Dr. Teggatz both in person and by phone. **B.**

### **Findings and Conclusions**

As previously indicated, I received a CI) from Truth in Justice which contained 15 digital images (majority long range) of primarily external views of the body of Sandra Maloney prior to the commencement of the autopsy. There are in fact 79 **additional** slides taken during the course of the autopsy.<sup>9</sup> I had the opportunity to review the 79 slides with Dr. Teggatz. The slides are extremely detailed and a number of them are closeups of the injuries described by Dr. Teggatz in his autopsy report. The slides completely dispel the criticism raised by Drs. Dibdin and Adams as to the anatomical findings made by Dr. Teggatz. Specifically:

- 1) The hemorrhages located in the anterior portion of the neck are not due to lividity. They are deep, prominent, focal and bilateral and not at all diffuse or suggestive of liver mortis;
- 2) Similarly, the petechiae in the left eye were focal and not diffuse enough to suggest lividity;
- 3) The hemorrhaging to the lower back cannot be due to lividity because the deceased was lying face down; and.
- 4) Dr. Adams's conclusions that the neck injury was over evaluated" and the

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<sup>9</sup> Most of the 79 slides, except three or four, have a marker in the photo identifying the specific autopsy number; ME98/053R. There is no such identifying number on the 15 images on the Truth in Justice CD.

laceration on top of the head may be due to the fire itself may make sense in the context of the 13 or 15 digital images that he reviewed. However, the 79 slides demonstrate with clarity that the neck injuries were not "over evaluated" and in fact reflect the significant injuries to the area. Further, the slides show that the laceration on top of the head was not caused by the fire but by some type of blunt force trauma.

Dr. Teggatz confirmed that he informed Lt. Molitor in his telephone call that this was a "confusing" case. Of course it would be. Prior to the commencement of the autopsy, Dr. Teggatz had been informed that this was an accidental death. The discovery of the laceration on the top of the head and the hemorrhages to the neck were very disturbing to Dr. Teggatz and precipitated the phone call to Molitor. While reviewing the 79 slides, Dr. Teggatz noted that the laceration to the back of the head was "a little too high" to be due to a fall by the deceased. He stated that injuries due to falls are typically in the rounded area of the back of the head. Additionally, the slide representing the exterior (skin) of the anterior portion of the neck revealed no external injuries. It should be noted that the thermal damage to this area of the body was not as great as to the majority of the body and was in fact more consistent with the extent of thermal damage done to the chest and abdomen area. When I inquired as to the absence of exterior bruising in this location (anterior neck), Dr. Teggatz explained that the lack of a struggle by the deceased while being choked would account for the absence of external bruising. As an alternative, the amount of thermal damage present could have obscured any external injuries. What was plainly clear was that there was no linear bruising or injury on the external portion of the neck that would suggest some type of strangulation involving the use of an electrical cord. Typically any force over a thin area (especially an electrical cord which is thinner than rope) would leave a mark. The absence of external ligature injuries and the deep, focal, and bilateral hemorrhages have made the physical injuries more consistent with manual strangulation than an aborted suicide. As Dr. Teggatz informed me after reviewing the materials that I had sent him along with the 79 slides: "Although a hanging is a possibility, the injuries are still more consistent with strangulation."

Dr. Teggatz stated that he should have been informed of Sandra Maloney's prior abuse of prescription medication so that toxicological tests could have been run by his office at the time of the autopsy. Since gastric contents and blood from the deceased were still being held by the ME's office in a frozen state the lab could do followup testing. At my request a gastric screen was completed and heart blood was sent to an outside lab to test specifically for Xanax and its metabolite as well as Klonopin and its metabolite.<sup>10</sup> The tox screen on the gastric contents involved thin layer chromatography testing (TLC), immunoassay method-Syva Rapid Test d.a.u. 10, and gas chromatography/mass spectrometry (GC/MS) testing. The lab was screening for anti-depressants, stimulants, narcotics and anti-anxiety drugs. The results of these screens were **negative**. The only items found were nicotine and cotinine (nicotine metabolite). The heart blood was sent to National

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<sup>10</sup>Sandra's medical records verified an extensive history with Klonopin. Xanax is a similar benzodiazepine and was specifically identified by Sheila Berry in an email to me on March 30<sup>th</sup>, 2004 as being a drug that needed to be specifically tested for. Either of these drugs when mixed with alcohol can be lethal. Klonopin is very unstable and evaporates quickly (decomposes) post mortem. Therefore, it is necessary to check for its metabolite.

Medical Services, Inc. for testing. These test results were also **negative** for Xanax and its metabolite as well as **negative** for Klonopin and its metabolite. The point raised by Turvey and others as to the possibility of use of controlled substances by Sandra Maloney as contributing to her death was a good one. However, testing has eliminated the theory/suggestion that somehow Sandra's death involved a drug overdose. A copy of the lab reports is attached.

Obviously, these tests that were performed at my request occurred six years after the samples had been taken. Accordingly, I inquired as to how the samples were preserved and whether the lab had confidence in the test results. The samples were stored in the refrigerator for two weeks immediately following the autopsy and then transferred to the freezer maintained by the ME's office. Ms. Gock, technical director of the lab informed me that the biological specimens had been properly preserved and the test results were an accurate analysis of the samples. She did point out to me the necessity of testing for the metabolite of Klonopin as that drug is known to decompose quickly upon death.

The only remaining autopsy related issue is the potential impact of alcohol. The BAC test result was .25. Dr. Teggatz had opined during trial that the alcohol did not have any affect on the cause of death but may have affected Ms. Maloney's ability to resist her attacker—it was hard for him to say. Dr. Jaramillo concurred that it could be a cause for confusion and disorientation but that for a habitual alcohol abuser the level of tolerance could be much higher. Dr. Spitz only addressed the alcohol issue in the context of mixing its consumption with the use of prescription drugs as contributing to the possibility of unconsciousness. Cross correlating the BAC of .25 with the vitreous alcohol result of .40, Dr. Dibdin theorizes that at one point in time, Ms. Maloney's blood alcohol content was higher than .25 and thus she would have been in an irreversible coma for up to five to seven hours prior to death. Because of the undisputed facts establishing that Sandra was alive and coherent at 6:03 p.m. on February 1<sup>st</sup> and that the fire occurred sometime within the next hour or so (see section V.C.), Dr. Dibdin's theory requires that Sandra Maloney was in the comatose state for 5 hours after being burned . Assuming the validity of this theory, Dr. Dibdin's theory is still dependent on an alternative explanation for the injuries to the neck which is not supported by the evidence and is in fact contradicted by the physical evidence. Simply put, in order to accept Dr. Didin's theory one must ignore the injuries to the neck.

#### **IV. The Basement**

##### **A. General Background**

As I indicated earlier in this report, there was evidence located in the basement of the residence which needed to be examined and considered in evaluating the likelihood of an "accident" causing the death of Sandra Maloney. There was a recreation or family room in the basement which was accessible from a set of stairs leading down into the basement from the first floor of the residence. Adjoining the rec room was a bathroom with a shower. Adjacent to the rec room was for lack of a better description a utility/laundry room with access through a doorway. On one end of the rec room were a couple of TVs with videotapes scattered about. There was a couch along the wall with a coffee table pushed against it. An

electrical cord was rigged around a conduit pipe nearly overhead the coffee table. Photos of the rec room are attached. In a laundry basket in the utility room a beige corduroy shirt/jacket was found with blood stains; the blood on the collar was determined to belong to Sandra Maloney after DNA testing by the Crime Lab. The presence of blood was also found at various locations in the bathroom. This resulted in the Wausau Crime Lab Response team securing a number of items for testing including the sink faucet, the shower head, the shower head pipe and the shower door itself. More detail will be provided as I address each issue presented by the evidence.

## **B. The Bloody Fingerprint and Jody Pawlak**

On February 18<sup>th</sup>, 1998, a number of law enforcement personnel went through the residence. Included were DCI agents Skorlinski and Eggum, Us. VanHaute and Molitor of the Green Bay P.D. and Anthony Spadafora and Ruth McDonald of the Wausau Crime Lab response team. Lt. VanHaute's report indicated that there appeared to be a red substance on the shower head and pipe as well as a fingerprint. He further stated that "[v]isual inspection showed a red substance on both the glass and on the edge of the shower door that opens." He indicated that red substance on the shower door edge appeared to have a fingerprint. Both the shower head pipe and the shower door were taken into evidence. DCI agent Eggum's report stated " [t]he Crime Lab Response team also located a fingerprint in a stain suspected to be blood. This fingerprint was located on the shower door of the bathroom." The shower door and other items were sent to the State Crime Lab in Madison for analysis. On June 3<sup>rd</sup> Harry Reed, fingerprint analyst for the Lab issued a report which identified the print on the shower door handle as belonging to Sandra's good friend Jody Pawlak. The print on the shower head was smeared and could not be analyzed. This report was forwarded to agent Skorlinski who dictated a report acknowledging receipt of Reed's analysis. There is no report of any interview with Pawlak subsequent to this finding by Reed. In fact, no one conducted a followup interview with Ms. Pawlak as to this print.

This information led Turvey in his *Threshold Assessment* to conclude that:

[t]he existence of this bloody fingerprint places Jody Pawlak at the decedent's home, in her basement, after the decedent received the injury to her head and prior to the fire. Pawlak was not interviewed about the existence of this bloody fingerprint subsequent to its discovery, nor does Pawlak mention being at the decedent's home subsequent to the decedent's head injury in her statements to authorities.

Turvey recommends that Pawlak be re-interviewed as a potential suspect. This conclusion has been repeated in almost every news story reviewing this case and has been one of the focal points for those individuals requesting a reexamination of John Maloney's conviction. This analysis by Turvey assumes that Sandra's death was intentional and those who feel it was an 'accident' have theorized that Pawlak showed up at the residence after the aborted suicide attempt and helped Sandra clean up in the downstairs bathroom and then left the premises.

Needless to say, Turvey's conclusion on this point was important and needed close examination. I was struck by some of Turvey's observations. First, how do we know that the print was actually in blood? None of the law enforcement reports were definitive. Eggum stated the stain was suspected to be blood and VanHaute characterized it as a red substance. Second, if the print is in Sandra's blood, how do we know it occurred on the night in question subsequent to the injury to Sandra's head? A number of people needed to be interviewed and reports reviewed to assess this issue.

Spadafora maintained some hand written notes from his work on February 18<sup>th</sup>. As to this issue, his notes provided: "[u]nder visible light seen reddish stain with ridge detail on handle edge of shower door...." Spadafora confirmed that the shower door was secured and removed for further analysis. Analysts Harry Reed (fingerprint) and Dan Campbell (serology) of the Madison Crime Lab were interviewed. When physical evidence comes in to the lab, these two sometimes inspect the items together because their respective testing may affect evidence that the other would be interested in. Such was the case with the shower door. Reed and Campbell got together on March 17<sup>th</sup>, 1998 to unwrap and inspect the door for a "possible fingerprint with blood". **The only blood found on the shower door by Reed and Campbell was the stain located on the glass of the door. They found no fingerprint in blood.** Reed stated, "we were looking for prints and blood". They were doing it together so as not to interfere with each other's subsequent testing. Campbell and Reed marked the locations where the blood stain was recovered as well as the fingerprint. These markings were verified by me upon physical inspection of the door. The bloodstain mark was on the glass and the fingerprint mark on the edge of the door.

A second area of inquiry dealt with the chronological timing of when Pawlak's print was left on the shower door edge and when the blood stains were left in the bathroom area. It is clear that there is no way to scientifically determine the age of fingerprints or blood stains with any specificity. One cannot conclude based on the evidence in this case as to when Jody Pawlak left her fingerprint on the shower door or when Sandra left the various bloodstains in the bathroom. It is pure speculation by Turvey that the fingerprint and the bloodstains were left subsequent to Sandra's head injury.

Jody Pawlak agreed to be interviewed. She stated that she was "absolutely not at Sandra Maloney's house on February 10, 1998." She further denied helping clean up an injured Sandra Maloney or carrying her upstairs. She informed me that had she found Sandy in an injured condition, "I would have called 911." Ms. Pawlak was not surprised that her fingerprint was found. She acknowledged that she had been at the house often in the past and had used the downstairs shower.

It is my belief that had Ms. Pawlak found Sandra Maloney in an injured condition, she would have called 911. This conclusion is in part based upon Ms. Pawlak's behavior the previous Sunday- February 8, 1998. On that date, Ms. Pawlak went to Sandra Maloney's residence. She found Sandra in a depressed condition. She found one particular "suicide" letter written by Sandra that stated "I hate you John. I love you Matt. Shawn and Erin and I always will." Pawlak stated at that time she crumbled it up and threw it into a garbage can in Sandy's kitchen. Ms. Pawlak took Sandra Maloney to Pawlak's residence in an effort to keep an eye on her and convince Sandra to seek help at Bellin Psychiatric Center.

Additionally, she contacted Lola Cator (verified by phone records) expressing concern about Sandra's condition and seeking Lola's assistance. It makes absolutely no sense to this investigator that Jody Pawlak would find Sandra Maloney in an injured condition on the evening of February 10<sup>th</sup> and leave her alone in light of Jody's actions on February 8<sup>th</sup>. Pawlak would have done something to help the deceased and wouldn't have left her alone.

I conclude that Jody Pawlak was **not** at the residence of Sandra Maloney on February 10, 1998. There is a complete lack of any evidence that establishes that Pawlak was in the house on the night in question. Her fingerprint was not found in blood and even if it had been, there was no evidence available which would allow anyone to reconstruct exactly when the blood appeared on the shower door or the fingerprint." A number of assumptions have to be established to support Turvey's conclusion concerning the "bloody fingerprint". They are: 1) Pawlak's fingerprint found on the edge of the door was actually in blood; 2) the blood was Sandra Maloney's; 3) Reed and Campbell missed the blood on the shower edge door; and, 4) the fingerprint was left there after the head injury occurred on February 10<sup>th</sup>. None of these assumptions are supported singularly or collectively by the evidence. Could Reed and Campbell have missed the blood where the fingerprint was found? It's a possibility but unlikely. One must do more than speculate in assessing the physical evidence.

In addition, for Jody to leave Sandra in an injured and drunk condition without any supervision would be totally inconsistent with Jody's past conduct of taking care of Sandra Maloney. Finally, we know that a phone call was placed at 6:39 p.m. on the evening of February 10<sup>th</sup> from Pawlak's residence. Pawlak's roommate, Mark Burns, reportedly did not specifically recall placing the telephone call, but did verify his and Jody's activities for the evening of February 10<sup>th</sup>. He did not respond to my request for an interview. For all of these factors a reasonable view of the evidence leaves no conclusion other than that Jody Pawlak was not present on February 10<sup>th</sup>.

### **C. Ligature**

As the attached photo demonstrates, an electrical cord was looped around a conduit pipe located near the coffee table in the basement family room. Lola Cator has stated that she put the electrical cord around the conduit pipe in about 1994 in order to plug the dehumidifier in and keep the cord off the ground so that the boys would not trip over the extension cord. A crime scene video was taken of the interior and exterior of the residence on February 11<sup>th</sup>. A review of that video shows the dehumidifier in the basement and it is not plugged into the hanging electrical cord. The plug for the dehumidifier trails behind the couch that is adjacent to the coffee table with the two stacked VCRs. However, it does not appear that the dehumidifier is plugged in at the nearest outlet. The plugs for the two VCRs are in close proximity to the female plug end of the hanging electrical cord. The VCR electrical plugs and the dehumidifier plug could all reach the female end of the hanging cord.

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<sup>11</sup> Hypothetically, if there was evidence that the shower had been newly installed on February 9, 1998, one could then logically conclude that Pawlak's fingerprint on the shower door edge was placed there subsequent to the installation of the shower door. However, the bathroom had been in the basement for some time and Pawlak had used it on numerous occasions in the past.

The proponents of the "accident theory" have suggested that the electrical cord was used by Sandra Maloney to fashion a noose in an attempt to hang herself on the evening of February O. She would accomplish this by attempting to stand on the two VCRs on the coffee table. The theory then assumes that the knot gave way. Sandra falls and injures herself. The attempted hanging would then explain the hemorrhages to the anterior neck region'. In Turvey's *Threshold Assessment*, he makes reference to a DCI report that states "an electrical cord and length of conduit pipe" was removed from the ceiling joist located in the basement family room, evidence item #29. He notes that there is no mention of these items ever being examined for blood, hair, or other trace/transfer evidence. Further the same DCI report indicates that the items were not sent to the crime lab but rather were sitting in storage in the G.B.P.D. evidence room. Turvey concludes "in order to reliably exclude the possibility of scenarios relating to accidental death in this case, the above mentioned examinations are requisite."

At my request, exhibit #29 was transferred from the Green Bay Police Department to the Wisconsin Crime Lab for analysis. Examination of the cord by the Crime Lab revealed that the two plug ends of the cord were free with a knot present in the cord some length away from the plugged ends, which formed a loop in the cord. Reviewing photographs taken at the scene and the videotape of the house taken by G.B.P.D., this loop in the cord was the portion of the extension cord that hung over the conduit pipe. The lab also noted that knot was not cinched tight. The detailed examination of the electrical cord resulted in the conclusion that blood was **not** identified on the electrical cord or conduit pipe. Also, no hairs or apparent tissue were observed on the cord or pipe. Inspection of the conduit pipe revealed that it appeared straight with no obvious bends or sway. An examination of the videotape and basement photos revealed that the conduit pipe was secured to the ceiling by placement at one point through a joist. I enlarged a digital photo (cord 1 from the TinJ CD) of the area using Adobe Photoshop and it appeared that the conduit pipe was secured to a small junction box as well. There was nothing unusual or out of the ordinary as to the conduit pipe as it was secured to the ceiling. Lt. Van Haute indicated that the conduit pipe was not pulled away from the ceiling nor was it bent. He stated that there was nothing observed about the conduit pipe that would suggest that any weight or force had been placed on it.

I had the opportunity to interview Al Conard, who resides in Minneapolis. Mr. Conard is the soon to be divorced spouse of Wendy Conard, the sister of the deceased. He and Wendy were married in 1985 and two of their children were close in age to two of the Maloney children. From the time they started dating, Wendy and Al, and eventually the children were frequent visitors to the Huth St. residence. Alan characterized John as "a brother to me" and indicated that he "loved both Sandra and John". Up until my interview, no investigator or anyone else had interviewed Al about the case. Because Al was adept at home remodeling, he did a substantial amount of work at the Maloney home. He converted the basement into a rec room and helped add the downstairs bathroom. After this work was completed, the Conard family stayed in the rec room when visiting the Maloneys. After providing Al an opportunity to review the digital photos of the basement, he informed me

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" Under this theory one still has to explain the absence of a ligature mark to the external area of the anterior portion of the neck.



that the "extension cord was within a foot of where it always was" and he could "never remember the cord not being there". He stated he could remember the extension cord being used to plug in the dehumidifier and believed, although he was not sure, that his son on occasion had used the extension cord to plug in videogames while playing with Matthew and Sean Maloney. In sum, up until the fall of 1997, the Conards were frequent visitors to the Huth St. Residence and after it was remodeled stayed in the basement rec room. The extension cord looped around the conduit pipe was a constant fact. Its presence and location in the basement was not unusual.

There is no evidence which supports the assertion that the electric extension cord was used by Sandra Maloney in an "aborted suicide" attempt.

#### **D). Other Physical Evidence in the Basement**

In addition to the blood located on the shower door, showerhead, and showerhead pipe, there were traces or spots of blood found in other locations of the basement. In the bathroom, blood was found in the carpet, on the vanity, and on the sink faucet. Luminol revealed the outline of a footprint going into the shower and a separate footprint exiting the shower. In addition, there was a partial barefoot print revealed with Luminol on the floor of the shower. Spadafora examined the bathroom. During his inspection, he speculated on whether Sandra Maloney passed out while on the toilet and banged her head on a nearby post causing the head injury found by Dr. Teggatz. Accordingly, he inspected the post near the toilet. He found no evidence to support his theory.

There were blood stains on the door leading from the recreation room into the utility room. Additionally, footprints were discovered in the vicinity of the door opening. U. Molitor described these footprints as "small prints." These footprints were discovered with the use of Luminol and faded quickly and almost immediately upon application. This accounts for the lack of any photographs of these items. Upon examination of the inside of the utility room, drops of reddish material were discovered near a dresser located in the corner. A corduroy shirt and a Packers sweatshirt with blood stains were found in a laundry basket located some distance from the dresser and the doorway. The stains on the corduroy jacket and the Packer sweatshirt were determined to be blood with Sandra Maloney as the source. The corduroy jacket had stains located on the lower portion of the shirt and stains on the collar. Those blood stains on the lower portion of the shirt appeared to be washed out in contrast to the stains on the collar. Sandra Maloney was found to be a source of the blood found in the bathroom carpet and the blood found on the door between the utility room and rec room (12/28/98 and 1/26/99 lab reports). In addition, a couple of small localized stains were found midway up the stairs on the stairwell wall leading up to the main floor. Sandra Maloney was identified as the source for the one stain that was tested.

In sum, there was blood found at various locations in the bathroom, on a sweatshirt and corduroy shirt in a laundry basket in the utility room, and on the door leading into the utility room as well as on the floor near by. Sandra Maloney was identified as a source of all of the blood that was tested by the crime lab. There is no question that at some point in time, she was bleeding in the bathroom. Further, that at some point in time-- perhaps at more than one time, she was bleeding while wearing the corduroy shirt. However, I am unable to

determine at what point in time all of these blood stains were deposited and if in fact they were deposited at the same time. Likewise, I am also unable to determine the cause. There was evidence that Sandra had significant problems with her menstrual cycle, which might explain the blood found in the bathroom. Likewise, there was the head injury that was found by Dr. Teggatz. On the other hand, there may have been some other injury prior to the day of the fire. One cannot simply make a determination as to how this "blood" evidence fits in. For lack of a better description, I view this evidence as a push in terms of determining whether an "aborted suicide" attempt was made. Aside from the inability to pinpoint timing and causation, I am concerned about the lack of a "trail" of blood which would suggest that the head injury occurred near the ligature resulting in Sandra then moving to the bathroom. She would then move from the bathroom to the utility room and eventually upstairs. There is no blood "trail" which would substantiate this theory.

In a report prepared by DCI Agent Eggum, he notes that stains suspected to be blood were found "on the coffee table in front of the couch." The reports and my interviews of other individuals present gathering evidence at the house do not substantiate this information. Spadafora and Lts. Molitor and Van Haute do not recall ever observing or for that matter collecting any such evidence. I questioned Agent Eggum on this point. He had no recollection of making such an observation and absent verification by the others present and the fact that the coffee table was not secured as evidence he concluded that he must have made a mistake. Spadafora and VanHaute carefully collected and observed various items of potential evidence in the basement. Neither identified in their notes/reports that stains believed to be blood were found on the coffee table. For these two to have missed such evidence would have been inconsistent with their other demonstrated efforts in collecting potential evidence in the basement. In light of the above, one cannot conclude that there was such evidence (stains) and clearly cannot conclude that there was blood on the coffee table.

## **V. Other Evidence**

### **A. Bloody Towels in the Garage**

During the examination of the residence and surrounding area after the discovery of the deceased, law enforcement recovered a garbage bag from the garage. The bag contained three towels which had stains that appeared to be blood. Lab test results revealed that the stains were blood and that DNA was recovered from one of the towels identifying Sandra Maloney as the source. Spadafora examined the garage area and the pathway from the house to the garbage hag for additional evidence and found none. My personal examination of the towels revealed relatively large stains but the towels were definitely not drenched or completely saturated with the stains. The significance of this evidence suffers from the same infirmities that are attendant with the blood evidence found within the residence. At what point in time where the stains deposited on the towels? Were they at the same time? What is the timing as related to the blood evidence found in the house? What was the cause? Where is the trail? For the reasons previously stated, I do not believe that the evidence supports the theory that Jody Pawlak removed the towels from the residence out to the garage during the evening on February 10t".

## **B. Storm Door**

No signs of forced entry into the residence were found by law enforcement. The crime scene video supports this determination. Aside from the windows, there were three potential points of entry or exit: a side door with storm adjacent to the driveway, a front door with storm, and a sliding glass door opening to the backyard. When Lola Cator arrived at the residence on February 11<sup>th</sup>, 1998, she first attempted to enter the residence by means of the side door. She found that the storm door was locked. Lola was in possession of a key that would open both the interior front and interior side door. She then went to the front door and found that the storm door was secured to the inside door by means of a shoe string. She was just able to open the door far enough to allow her to cut the string with a scissors. Lola then unlocked the interior door and entered the residence. About a month prior to this, Lola had found that Sandra had used the shoe string method to secure the front storm door and was not surprised when she found it on the 11th. Because of this shoestring, one can appropriately conclude that if there was an intruder that he/she could **not** have left the house through the front door. The sliding glass door was also eliminated as point of exit as it was secured shut by means of an inside safety bar. Accordingly, the interior side door and its storm door become a matter of consideration. Simply, if it could be established that the side door was locked in a way that could have only been done from the inside: one would conclude that Sandra had been alone as there was no way for an intruder to exit the premises.

Lola was unsure during her interviews with law enforcement as to what she exactly did when opening the side door and the storm door from the inside after entering the premises on the 11th. During an interview with Lt. Brodhagen she concluded that the interior door was not locked and that she opened it by merely turning the doorknob. She was positive that the storm door was locked. However, during that same interview she was unsure exactly how she unlocked the storm door from the inside. In addition to a flip lock on the handle, the storm door had a deadbolt lock further up the door. The deadbolt could be locked either by turning the knob on the inside or by a key from the outside. The flip lever on the handle had a no-lockout feature. This feature provided protection from being locked out of a residence accidentally. If the lock on the handle was flipped while the door was open, it would automatically unlock when the door would close. In other words, for the lock on the handle to operate successfully the door must be closed and locked from the inside. Lola concluded she was unsure which lock she opened on the side door storm but thought it might have been both. At trial she apparently testified that she opened the storm door by turning the knob on the deadbolt. She was cross examined at trial on this point as well her prior statements to Brodhagen and Eggum reflecting confusion as to how she unlocked the storm door.

Law enforcement initially found that the side storm door handle flip lock was frozen open. The storm door was secured at the Wausau Crime Lab and eventually transported to Rice Lake for examination by the manufacturer, Wright Industries. The door was examined by John K. Berkseth, VP in charge of engineering. Upon examination of the door by Berkseth he concluded that metal burrs had hound the lever open in a frozen position. Further, that the problem had to have occurred when the door was manufactured. The only way for the side storm door to have been locked is by means of the deadbolt. The door itself, and demonstrative remakes of the section of the door in question were presented to the jury during trial. Berkseth was subject to extensive cross examination by Atty. Boyle.

If the side storm door was the only means of exiting the residence and it was locked by the flip lock on the handle it was more likely that there was no intruder on the evening of the 10th. Ironically, the side storm was installed by Al Conard. He informed me that he had always felt that it was his installation that had prevented the handle from working correctly. Conard stated that the flip lock did not work and one could only lock the door by means of the deadbolt. Similarly, since the deadbolt lock on the door came with only two keys, if that was locked the recovery of both keys from Sandra would make it more likely that there was no intruder. Unfortunately for the defendant, only one key for the deadbolt was recovered from the inside of Sandra's residence. During a sequence of interviews with DCI agent Skorlinski, the defendant first admitted having a key for the storm and then not being able to find it and finally declaring that it was unimportant. This issue of the door was clearly in play during the trial and Conard's information further bolsters Berkseth's testimony. There is no evidence that provides me a basis to support the defendant on this point.

### **C. Chronology 2/10/98**

Sandra's physical location during the day on February 10, 1998, can be determined with some accuracy at various times throughout the day. At 8:46 a.m. she placed a call to her mother, Lola Cator, and the two of them spoke for about a minute. According to contemporaneous notes kept by Lola, Sandy was going to work and then to see Judi Katers about getting her driver's license back. Shortly thereafter at 9:00 a.m., Sandra received a phone call from a phone contained just off the waiting room at a business known as Madison Avenue Hair Design (this business is located between the Green Bay Police Department and the law offices of John Maloney's divorce attorney). Subsequently, a store videotape maintained by Copps Food Center revealed that Sandra entered Copps Liquor at 9:28 a.m. It showed her purchasing a 375ml bottle of Aristocrat Vodka<sup>13</sup> and a pack of Marlboro Lights. Sandra then exited the store. She was wearing a dark colored jacket that was closed up to the neck and wore a dark colored baseball hat with a logo and a different colored rim. She appeared to be wearing jeans but the color of her shirt could not be determined due to the jacket being closed. According to Lt. Urban of G.B.P.D., who reviewed the videotape, there were no injuries detectable to the face or neck area of Sandra Maloney. She appeared to be smiling and talkative while making the purchase of the Vodka and spoke not only with the checkout clerk but also the delivery man setting up a Budweiser display in the store.

At 9:36 a.m. Jody Pawlak called Sandra and spoke with her for almost three minutes. During an interview with Lt. Urban on 2/18/98, Pawlak indicated that Sandy sounded happy and perky during this phone call. Sandy told Jody that she was going to work on a wallpaper job with her friend Sara<sup>s</sup> in the Appleton area and that she would be going out for drinks after work. At approximately 3:13 p.m. that afternoon Sandra called her mother and had an extended phone conversation. According to Lola, Sandra was crying and telling her mother

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<sup>13</sup> During the search of the residence after the tire, five bottles of Vodka were found, at least two of which were 375ml. Prints were recovered from four of the bottles. All were identified as Sandra Maloney's. John Maloney and Jody Pawlak were excluded as the source of the prints.

<sup>14</sup> This leads to another trail. Although I didn't really follow up on this question, it appears that Sandra had no such job and that this "friend" denies ever having worked with Sandra or seeing her since high school.

that she loved her. She also informed Lola that John was going to bring the kids over at 6 p.m. and that she had got her driver's license back.

The evidence is unequivocal that Sandra called her mother once again at 6:03 p.m. on February 10<sup>th</sup>. They spoke for approximately eight minutes. Sandra was upset and stated either that John had not brought the kids over or that they weren't there yet. Sandra expressed resignation over losing custody of the kids and sounded depressed. She expressed thanks that Lola was coming up the next day to see her and inquired whether Lola could come up on the evening of the 10<sup>th</sup>. Law enforcement discovered the phone off of the hook at the residence upon their arrival on February 11<sup>th</sup>. Lynn Stillman, a friend of the deceased, had tried calling at approximately 7:15 p.m. on the 10<sup>th</sup> and received a busy signal. At 7:35 p.m. she called again and got Ms. Maloney's answering machine. Nortel, the manufacturer of the phone in question examined Ms. Maloney's phone. They concluded that the intense heat had caused the phone to be able to accept an incoming call while the handset was out of the cradle. Therefore, we know that the fire commenced sometime between 6:11 p.m. and 7:35 p.m. on the evening of the 10<sup>th</sup>. This conclusion is also substantiated by the fact that the living room clock had stopped at 7:53 and the kitchen clock had stopped at 35 minutes after the hour.<sup>15</sup>

What can we conclude from this information? We know that Sandra was alive and well without any injuries to her neck or head the morning of February 10<sup>th</sup>. Periodic phone calls with her mother in the afternoon and evening reveal that she was not comatose or passed out for any extended period of time before the commencement of the fire. Additionally, although there were indications of being depressed, there were no verbalized expressions of thoughts of suicide during those conversations. She was alive and coherent enough to speak at 6:10 p.m. and did not complain of any physical injuries. It is difficult to assess the accuracy of the substance of the information being provided by Sandra j u s t as it is questionable that she went to work, we don't know if in fact plans had been made to bring the boys over. Aside from this, we do know that subsequent to the call with Lola, somebody took the phone off the hook. There is nothing in this information that makes it more likely that Sandra's injuries were due more to an "accident" than being inflicted by someone else. As a matter of fact it seems to give more support to the conclusion that Sandra's injuries were caused by someone else.

#### **D. Miscellaneous**

Obviously, the case against John Maloney was circumstantial in nature. Neither his DNA nor his fingerprints were found at the scene. Correspondingly, there are other circumstantial facts that I have not examined or discussed in the course of this report. Such things as the details of Maloney's statements to the interviewing agents, the strength/weakness of his alibi time line, the full extent of the nature of his relationship with his estranged wife, the details of the physical violence directed at Tracy Hellenbrand and nature of the admissions made during the meeting in Las Vegas , and his involvement with

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<sup>15</sup>Due to damage to the clock it was unclear whether the hour hand of the clock was at seven or eight.

the case of *State v. Hernandez*. Brown Cty # 97 CF 757 <sup>16</sup> have not been analyzed. All of these factors are, at their essence, directed to a weighing of the circumstantial evidence available to incriminate John Maloney as the perpetrator.

As one can readily discern, any discussion of the arson evidence is largely omitted." A decision was made in conjunction with Deputy Attorney General Bach not to pursue this aspect of the case after considering the other physical evidence evaluated and developed in the course of this report. The primary issue is whether Sandra Maloney was killed by manual strangulation (a homicide) or died accidentally. As Dr. Spitz observed, the fire is a "red herring". Sandra Maloney was not killed by the fire. All the medical examiners involved and identified in this report are in agreement on this point.

During the course of my review various individuals, including members of the media, raised concerns about one or more of the videotapes, including a corresponding transcript, presented to the jury during trial.<sup>18</sup> The first video in question is the "crime scene" video. This video portrays both the exterior and interior of the Huth St. Residence on February 1 P<sup>h</sup> after the discovery of the deceased. Stuart Nelson of GBPD was the operator of the camera that produced this particular videotape. When reviewing a copy of the tape, one can observe that toward the end of the tape it is apparent that the tape is shut off and then resumes at a different location in the house with the camera timing clock now running in the lower right hand corner. Officer Nelson informed me that after filming the side door frame, the camera was turned off and the tape removed. Some time later, when law enforcement was about to move the body, it was decided to film that event in case the body became dismembered during the process. This accounts for the change that is observed when viewing the tape. It should be noted that the original tape is in the Hi-8 format. Copies were made by Nelson in the VHS format for trial and subsequently in response to requests from the media and others. The original Hi-8 still exists.

The second video in question is the tape of the meeting between John Maloney and Tracy Hellenbrand in Las Vegas on July 26<sup>th</sup> and 27<sup>th</sup>. The surveillance team which viewed and recorded the encounter included DCI agent Eric Szatkowski, GBPD Lt. Brodhagen and

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<sup>16</sup> During a time period from 1997 until shortly before 2/11/98, Green Bay PD, including the defendant, was involved in the investigation and prosecution of this case which had been seriously hindered by the fact that the victim's body had been extensively burned. The case broke when two key witnesses failed polygraphs and then proceeded to provide GBPD the details of the offense identifying Hernandez as the perpetrator.

<sup>17</sup> In addition to various conflicting opinions on the arson investigation I did speak with the investigator for American Family Insurance. He stated that there was no doubt in his mind that the fire was arson. He did not do his own independent analysis but did review the work of the state's witnesses. American Family only paid that amount that they were legally obligated under the terms of the policy. To the extent that John Maloney benefitted from that payout the Company did discuss but decided not to pursue him civilly after the verdict. Conversely, I recently learned from Dr. James Munger, a forensic consultant in fire safety engineering, that he conducted a full-scale sofa burn and small scale testing of the type of Vodka found at the Huth St. residence. Per these tests additional questions have been raised concerning the accuracy of the conclusions reached by the arson experts called as witnesses by the state at trial on how the fire specifically started and spread.

<sup>18</sup> Regardless, these tapes do not affect the determination that Sandra Maloney was killed as a result of manual strangulation. Rather the videotapes go to other issues which fall outside of the scope of this report.

Detectives Ramos and Vaccaro of the Las Vegas PD. First, questions have been raised as to the accuracy of the transcript provided to the jury during the playing of the videotape at trial. Various members of the media have been actively pursuing and analyzing this issue. Second, it is suspicious that special prosecutor Joseph Paulus incurred a bill of \$ 27,645.00 (invoiced at a discounted price of \$12, 995.00) to prep excerpts of this video for trial. The sheer magnitude of the hours of recordings prevents this investigator from pursuing these issues. Further, as noted, these issues do not dispel the conclusion that Sandra Maloney was killed by means of manual strangulation. However, in an attempt to assist the media and Atty. Wasserman in their efforts, I learned the following information: The recording equipment used in Las Vegas was multi-faceted. There was video with audio and separate audio only equipment. Additionally, on July 27<sup>th</sup> there was a live audio only feed via telephone link back to Madison where it was recorded. The recordings made by means of the phone link consists of four cassette tapes, still in DCI custody (#B-09924) and have never been used for transcription. Eleven audio only cassette tapes were generated in Las Vegas covering July 26<sup>th</sup> and 27<sup>th</sup>. Lt. Brodhagen brought these tapes back and turned them over to DCI agent Skorlinski. These tapes were assigned #B-01680. They were duplicated on August 4<sup>th</sup> and returned to custody. The duplicates (#B-09925) were then used by DCI program assistants to type the transcript which was eventually used during trial. The duplicates were never "enhanced."

The original July 27<sup>th</sup> videotapes from Las Vegas have remained in the custody of the Green Bay PD. Copies (#B-01682) were subsequently provided to DCI. On November 18<sup>th</sup>, 1998, the original videotape of July 27<sup>th</sup> was taken to Milwaukee and five audio enhanced versions were generated and assigned #C-02457. The bill incurred by Paulus is apparently related only to the excerpts of the Las Vegas video used by him during closing argument.

#### **IV. Conclusion**

I have the unshakeable belief along with the jury that some person committed physical harm to Sandra Maloney by means of manual strangulation between the hours of 6:10 p.m. and 7:30 p.m. on the evening of February 10, 1998. No matter how one analyzes it, the evidence clearly and without question establishes that Sandra Maloney incurred deep focal bilateral hemorrhages to the anterior portion of her neck. This conclusion is also supported by the other injuries discovered by Dr. Teggatz during the course of the autopsy. The injury to the parietal portion of the skull and the hemorrhages on the posterior portion of the body all support the conclusion of manual strangulation. The suggestion that the anterior hemorrhages were caused by an aborted suicide is a creative theory but unsupported by the facts. Aside from the injuries described above, there was no ligature mark on the exterior skin on the front side of Ms. Maloney's neck and no hairs or trace evidence was found on the electrical cord. The knot holding the electrical cord was not even cinched tight. Am I bothered by the fact that there was blood found at various locations throughout the basement and the failure of law enforcement to provide Dr. Teggatz with the requested information on the day following the autopsy? You bet I am. However, these issues do not in any way affect the anatomical findings of the autopsy.

Second, the evidence does not support the conclusion that Jody Pawlak was at Sandra Maloney's residence on the night in question. Her fingerprint was found on the edge of the shower

door and on some empty beer bottles found inside of the house. This is easily explained by the fact that she was a frequent visitor to the residence. There is no fingerprint in blood and even if there was, there is no evidence to establish that it was imprinted on the night in question. Above all, the suggestion that Jody left Sandra in an injured condition is completely inconsistent with how Jody had cared for Sandra in the past.

Accordingly, the suggestion that there is evidence that establishes that the death of Sandra Maloney was accidental is not supported by physical evidence that would give me a basis to conclude that there was a 'manifest injustice'.

## Sources

WWW.JOHNMALONEY.ORG

W W W.TRUTHINJUSTICE.ORG

Sheila Berry

Jeannie Anthony

Dee Hall

Medical Records of Sandra Maloney

DCI File

Mike Fredericks

Attorney Gerald Boyle

Attorney Lew Wasserman

Dr. John Teggatz

Dr. James Dibdin

Dr. Gregory Schmunk

Jody Pawlak

Gina Barton

Anthony Spadafora (Wausau Crime Lab)

Harry Reed (Madison Crime Lab)

Daniel Campbell (Madison Crime Lab)

Lt. Alan Van Haute

Lt. Tom Molitor

File maintained by the Brown County District Attorney's Office

Personal inspection of items held in storage by Green Bay Police Department

Personal inspection of Madison Avenue Hair Salon

Michael Leslie (American Family Insurance)

Lee Krieg (American Family Insurance)

CD delivered by Truth in Justice to the Attorney General

Crime scene video taken by G.B.P.D. on 2/11/98 79

slides of autopsy taken by Dr. Teggatz

Assistant District Attorney Mike Balskus

Sue Gock (Milwaukee County ME's Office)

Court T.V. version of "Burning Desire"

Eileen Heller (Milwaukee County ME's Office) Photos

taken by Ruth McDonald (Wausau Crime Lab) Lola

Cator

Attorney John Pray (UW Law School-Innocence Project)

Numerous unsolicited emails from a variety of individuals

Wendy Conard

Al Conard

Dr. James Munger

Specialist Stuart Nelson (GBPD)

Carolyn Kelly (DCI)

Kim Skorlinski (DCI)

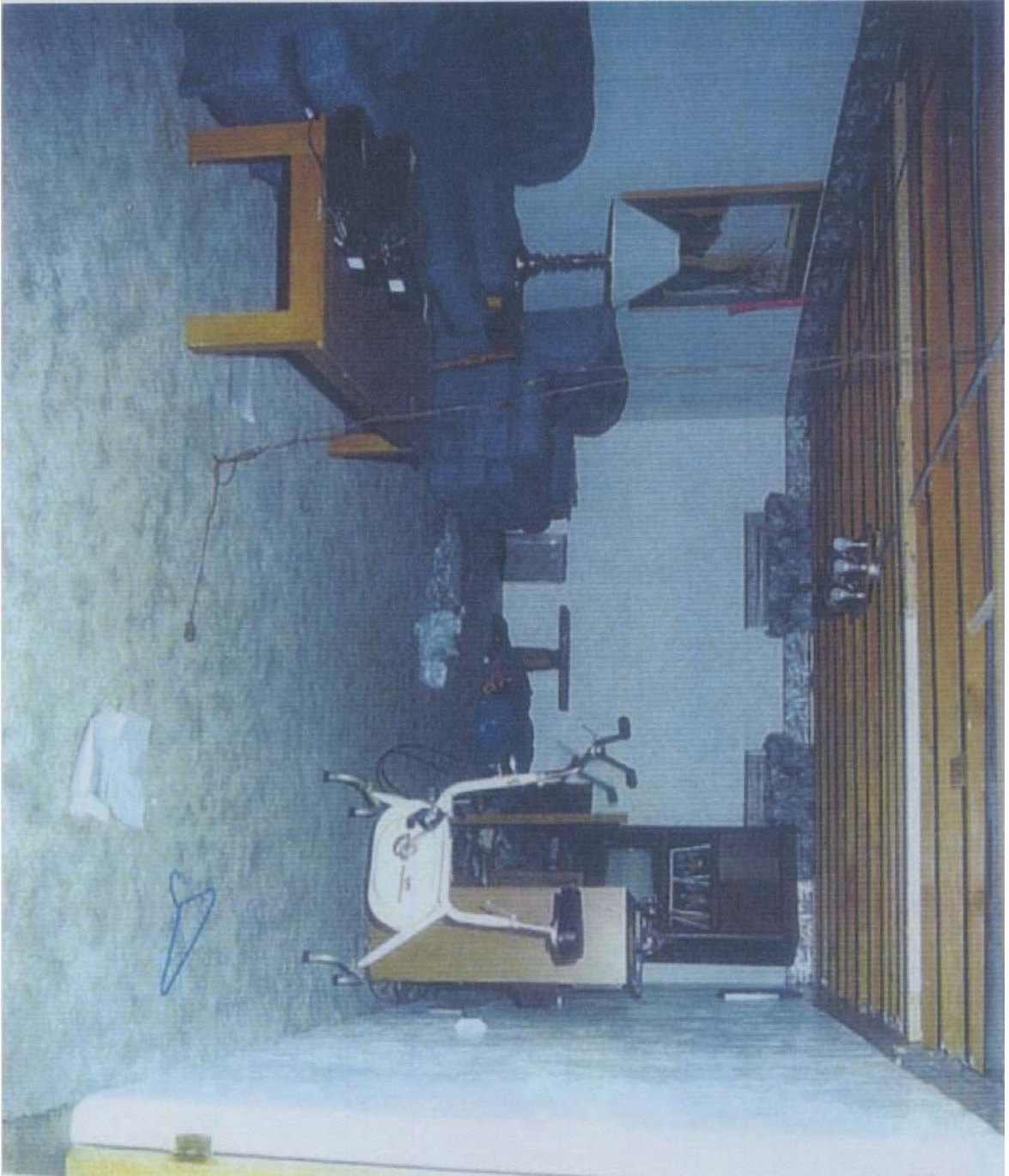
Greg Eggum (DCI)

Various news stories

*Turvey's Threshold Assessment*

*Munger's Report of Expert Opinions*







NOV. 2004 10:21AM

NO. 042

OFFICE OF THE MEDICAL EXAMINER, WISCONSIN

for ..., *Milwaukee Gaunt*

Date 10/6/2004

ME Case No. **98-053R**

Name Maloney, Sandra J.

Age 40 yrs. Autopsy Date 2/12/1998

Specimens Received 2113/1998

### REPORT OF TOXICOLOGICAL ANALYSIS

Comprehensive Toxicology Screen:

Gastric drug screen:

Nicotine  
Cotinine

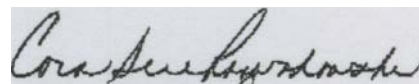
Analyte Quantitation:

Analyte	Specimen	Results	Method
Alprazolam	Hrt Blood	None Detected	NMS
Alpha-Hydroxyalprazolam	Hrt Blood	None Detected	'See separate report
Clonazepam	Hrt Blood	None <i>Detected</i>	NMS
7-Aminoclonazepam	Hrt <b>Blood</b>	None Detected	*See separate

*.16fiae-01.66c(A.*

Susan B. Gock M.S. MT(ASCP)  
Technical Director

Forensic Chemist



933 WEST HIGHLAND

AVENUE • MILWAUKEE. WISCONSIN 53233 • TELEPHONE (414) 223-1200

JEFFREY JENTZHN, M.D.  
Medical Examiner

JOHN R. TEGGATZ, M.D.  
Deputy Chief/ Medical Examiner

S<sup>m</sup>U<sup>9</sup>**National Medical Services Inc.****CONFIDENTIAL**

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e-mail: nms@nmslab.com

Robert A. Middleberg, PhD.. DASFT. DABCC, Laboratory Director

**Toxicology Report****Report** Issued 06/18/2004 10.08**Patient Name** MALONEY, SANDRA J.**Patient ID** 98-053R**Chain** 10190944**Age** 40 Y**Gender** F**Workorder** 04135550**Received** 6/7/2004

10118

Milwaukee County Medical Examiner

Attn: Susan Gock

933 W. Highland Ave.

Milwaukee, WI 53233

**Lab Sample ID: 04136550-001 Patient Name: MALONEY, SANDRA J. Matrix: Blood**

Collect Date/Time	Container Type	Approx Volume/Weight
Not Given	Clear vial	7 mL

**Receipt Notes** None Entered

Analysis and Comments	Result	Units	Reporting Limit	Notes
<b>9106B Alprazolam and Metabolite Screen, Blood</b>				
Analysis by High Performance Liquid Chromatography (HPLC)				
Alprazolam	See Comment	ng/mL	10	
Synonym(s): Xanax®				
Therapeutic range: 10 - 50 ng/mL at trough.				
Potentially toxic at greater than 75 ng/mL.				
<b>Alpha-Hydroxyalprazolam</b>	<b>See Comment</b>	ng/mL	10	
Synonym(s): Alprazolam Metabolite				
Comment: This screening result indicates that further testing is required, <b>Refer to</b> the confirmation test for the final result(s).				
Alpha-Hydroxyalprazolam has approximately 66% of the pharmacological activity of Clonazepam.				

**9139B Clonazepam and Metabolite Screen, Blood**Analysis by High Performance Liquid Chromatography/  
Tandem **Mass** Spectrometry (LC/MSIMS)

Clonazepam	None Detected	ng/ml	2.0
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**National Medical Services Inc.****CONFIDENTIAL**

3701 Welsh Road, PO Box 433A, Willow Grove, PA 19C93-0437

Phone: (215) 657-4900 Fax: (215) 657-2972 e-mail: nms@nmctab.com

Robert A. Middleberg, PhD. DABFT. OP. CC. Laboratory Director

**Lab Sample ID: 04136660-001****Patient Name: MALONEY, SANDRA J.****Matrix: Blood**

Result	Units	Reporting Limit	Notes
--------	-------	-----------------	-------

**Analysis and Comments**

Synonym(s): Clonopin®

7-Amino Clonazepam

None Detected

ng/mL

2,0

Synonym(s) Clonazepam Metabolite

**6660B Alprazolam and Metabolite Confirmation, Blood**

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Alprazolam

None Detected

ng/mL

13

Synonym(s): Xanax®

Therapeutic range: 10 - 50 ng/mL at trough  
Potentially toxic at greater than 75 ng/mL.

Alpha-Hydroxyalprazolam

None Detected

ng/mL

50

Synonym(s): Alprazolam Metabolite

Alpha-Hydroxyalprazolam has approximately 66% of the

pharmacological activity of Alprazolam.

Reviewed 10/4/04  
1506

